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April 30, 2018

U.S. Environmental Protection Agency
Office of Land and Emergency Management Docket
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

via Regulations.gov

Attention: Docket ID No. EPA-HQ-OLEM-2017-0286

Dear Sir or Madam:

The Coal Combustion Residuals (CCR) Ad Hoc Workgroup of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) appreciates the opportunity to provide comments on the U.S. Environmental Protection Agency's (EPA) proposed rule, Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities: Amendments to the National Minimum Criteria (Phase One), published in the Federal Register on March 15, 2018 (51 FR 11584). In addition to these comments, individual State or Territorial programs may also provide comments based on their own State perspectives and experiences with the regulation of CCRs.

ASTSWMO is an association representing the waste management and remediation programs of the 50 States, five Territories and the District of Columbia (States). Our membership includes State waste program experts in the management and regulation of solid and hazardous waste.

Proposals Associated with the WIIN Act

Our comments focus on the proposed revisions associated with the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act that would establish alternative performance standards at least as protective as those in the EPA 2015 CCR rule. The flexibilities that EPA has proposed recognize that, through enactment of the WIIN Act, States or EPA now have the ability to implement a CCR permit program to oversee these CCR units. ASTSWMO encouraged EPA to establish a mechanism that would accommodate regionally appropriate State standards in comments on the CCR rule proposed in 2010. During consideration of legislative language to provide the statutory authority for the establishment of a CCR permit program, we expressed our view that such a permit programs would have the benefit of allowing flexibility for States to have regionally appropriate State standards, in the same way that EPA-approved State municipal solid waste (MSW) landfill permit programs are able to implement alternative site-specific designs, since EPA-approved State CCR permit programs would take the place of the self-implementing federal standards. Such flexibility would allow modification of certain requirements based on site-specific, risk-based factors with State regulatory oversight. States are not looking to this flexibility in order to undermine the safeguards built into the rule. Rather, this flexibility is critical to the successful implementation of the rule due to the wide variety of climatic, geographical and geological conditions present across the nation. The flexibilities in this proposal would mirror the same flexibility that is already

available in the federal MSW landfill criteria under 40 CFR part 258 that States have been implementing successfully for over 20 years.

During the development of the federal CCR rule, ASTSWMO recommended the RCRA Subtitle D Part 258 criteria as the framework for EPA to build upon for the CCR regulations. We support the proposed six alternative performance standards that EPA modeled after provisions in the Part 258 criteria, which would allow a State with an approved CCR permit program or EPA to:

- 1) Use alternative risk-based groundwater protection standards for constituents where no Maximum Contaminant Level exists;
- 2) Modify the corrective action remedy in certain cases;
- 3) Suspend groundwater monitoring requirements if a no migration demonstration can be made;
- 4) Establish an alternate period of time to demonstrate compliance with the corrective action remedy;
- 5) Modify the post-closure care period; and
- 6) Allow the State Director to issue technical certifications in lieu of the current requirement to have professional engineers issue certifications.

On this point, we believe that all relevant sections of the existing Part 257 CCR rule should be modified such that the State Director of an approved State CCR permit program (a “participating” State) has authority to provide certifications or flexibilities that are currently allowed for a qualified professional engineer.

EPA notes that the Part 258 provisions referenced in the above alternative performance standards were adopted based solely on a finding that they would protect human health and the environment. As is the case with Part 258 implementation through EPA-approved MSW landfill permit programs, the proposed flexibilities will ensure that States can regulate CCR facilities in a manner that is protective but allows for site-specific information to make decisions on when corrective actions/closure/continued groundwater monitoring is appropriate. We appreciate additional flexibilities and site-specific considerations that EPA is proposing to incorporate from 40 CFR part 258.

We also appreciate the additional flexibility on which EPA is seeking comment to establish alternative, risk-based location restrictions in lieu of the location restrictions found at §§ 257-.60 - 257.64.

In terms of implementation of the proposed alternative standards, it would be helpful if EPA could develop standard criteria that States could use to demonstrate their permit program would be as protective as what is in the current CCR regulation. We also suggest that EPA use the same criteria for itself when it develops a permit program, especially if EPA plans to have these same flexibilities as part of its program.

EPA is requesting comment on whether it is appropriate and consistent with the WIIN Act for the alternative performance standards to apply directly to a facility in a nonparticipating State on the basis that the units in the nonparticipating States are subject to oversight by EPA through the enforcement authorities provided directly to EPA by the WIIN Act. For example, EPA is seeking comments as to whether, in a nonparticipating State, an alternative risk-based groundwater protection standard could be established by an independent technical expert(s) and the alternative standard implemented by the facility without the intervention of a permitting authority. We have concerns about an independent technical expert being given the authority to determine alternative performance standards that facilities could directly implement in nonparticipating States, even though there would be EPA oversight and enforcement. We recommend that the option of establishing and allowing facilities to implement alternative performance standards in non-participating States be limited to those facilities where EPA is the permitting authority.

Definitions

State Director:

We do not believe that the definition of “State Director” should be revised to apply the term to EPA where EPA is the permitting authority. In our view, this would confuse rather than clarify the roles of States and EPA in the implementation of CCR permit programs. “State Director” should only be used when referring to a State permit program. The term “State Director of a participating State” is used in the proposed regulatory language, which indicates it is the State, not EPA, that is the permitting authority. It would not be appropriate to apply the term “State Director of a participating State” in referring to EPA. We believe the appropriate approach, as EPA suggested by way of example in the preamble, is to add the words “or EPA where it is the permitting authority” to each of the proposed flexibilities.

Nonparticipating State:

We recommend that a definition of “nonparticipating State” be added to the definitions in the final rule.

Regulatory Language

In the proposed regulatory language, the term “State Director of a participating State” is used most often but not consistently. For example, under § 257.97 Selection of remedy, “Director of approved participating State” is used, and “Director of a participating State” is used in § 257.98 Implementation of the corrective action program, and in § 257.102 Criteria for conducting the closure or retrofit of CCR units. We believe it is important to be consistent in this terminology in order to be clear about the permitting authority. We recommend the term “State Director of a participating State” be used consistently in the regulatory language.

§ 257.102 Criteria for conducting the closure or retrofit of CCR Units, (4) Use of CCR in Design and Construction of Final Cover System:

In the preamble on page 11603, under the section G. Revision to Allow the Use of CCR During Certain Closure Situations, EPA indicates that they are proposing two performance standards, one that would apply directly to facilities in any nonparticipating State and the other that would apply in a participating State. However, in the regulatory language proposed under § 257.102(d)(4), there is only a reference to a participating State:

- (A) A determination by the Director of a participating state that the criteria in paragraph (d)(4)(ii) of this section have been met; *or (emphasis added)*
- (B) The certification by a qualified professional engineer that the criteria in (d)(4)(ii) of this section have been met, as required in paragraph (d)(4)(iii) of this section.

From the preamble discussion of this section, “or” suggests that (B) would apply in a nonparticipating State. If this is a correct reading, there is a need to add “in a nonparticipating State” in the regulatory language.

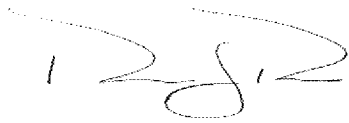
Additional Proposals

The ASTSWMO CCR Ad Hoc Workgroup is not providing comments on the four proposed revisions associated with the judicial remand, or the proposal to allow CCR to be used during certain closure situations. We urge EPA to carefully consider individual State comments regarding these proposals, as well as State comments on the rule in general, as EPA finalizes the proposed amendments.

The EPA CCR rule and its implementation are of long-standing importance to ASTSWMO. We appreciate the opportunity to provide input to EPA regarding these proposed amendments to the 2015 rule, and EPA's consideration of our comments.

If you have any questions about these comments, please contact Mark de Bie (CA), ASTSWMO CCR Ad Hoc Workgroup Co-Chair, at 916-341-6331 or mark.debie@CalRecycle.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Kloo', with a stylized flourish at the end.

Kenneth J. Kloo
ASTSWMO President